

PART 1

REASONS FOR SEPARATION

A. Expiration of Service Obligation

1. Basis. A servicemember may be separated upon expiration of enlistment or fulfillment of service obligation. This includes separation when the servicemember is within 30 days of the date of expiration of term of service under the following circumstances:

a. The servicemember is serving outside the continental United States (CONUS); or

b. The servicemember is a resident of a State, territory, or possession outside CONUS and is serving outside the his or her State, territory, or possession of residence.

2. Characterization or Description. Honorable, unless:

a. An Entry Level Separation is required under subsection C1 of part 3;

b. Characterization of service as General (under honorable conditions) is warranted under section B of part 3 on the basis of the Enlisted Performance Evaluation System; or

c. Another characterization is warranted upon discharge from the IRR under part 8.

B. Selected Changes in Service Obligations

1. Basis. A servicemember may be separated for the following reasons:

a. General demobilization or reduction in authorized strength.

b. Within 90 days of the date of expiration of active obligated service under the following conditions:

(1) when the servicemember's ship or mobile unit is about to deploy with the probability of not returning to the United States before the expiration of the servicemember's active obligated service, the servicemember may be separated within 5 days of the deployment date, when there would be insufficient

time to complete separation processing prior to servicemember's expiration of active obligated service if the servicemember returned to CONUS from the first overseas port-of-call;

(2) When the home port of a servicemember's ship or command changes, the servicemember may be separated within 5 days of the ship's/command departure for the new home port when there would be insufficient time to return the servicemember to the old home port for separation processing, or to complete separation processing at the new home port prior to servicemember's expiration of active obligated service;

(3) When a servicemember is awaiting separation at a separation activity for reason of expiration of active obligated service and has not indicated a desire to reenlist;

(4) When a servicemember is in temporary duty under treatment status or has been found physically qualified to resume full duty, regardless of duty status, with 3 months or less active obligated service remaining and who does not desire reenlistment;

(5) When enlistment or obligated service expires on a Saturday, Sunday, or holiday, or a day preceding a holiday, separation may be effective up to 3 days prior to expiration of active obligated service;

(6) Upon completion of a cruise, when the servicemember concerned extended his or her active obligated service for the express purpose of participating in or completing the cruise;

(7) When a ship or unit returns from extended deployment (6 months or more), separation may be effective up to 31 days prior to expiration of active obligated service;

(8) To permit a servicemember to return home during the Christmas and New Year holiday period. Except as indicated below, a servicemember whose expiration of active obligated service will occur between the third Monday of December of the current year and the first Monday of January of the following year, may be separated not earlier than the second Monday of December of the current year. Early separation under this subsection is not authorized for a servicemember:

(a) Who, in the judgment of the commanding officer, cannot be spared; or

- (b) Who does not desire early separation; or
- (c) Who is a reservist undergoing active duty for training; or
- (d) Whose expiration of active obligated service will occur during the period specified above as a result of any other early release program; or

(e) Who is scheduled for transfer to the Fleet Reserve/retired list;

(9) Upon returning from a permanent overseas duty station, a servicemember may request separation upon his or her return to CONUS: or

(10) When serving overseas, a servicemember who is entitled to and elects transportation to an area outside CONUS may request separation prior to arrival in CONUS.

c. Acceptance of an active duty commission or appointment, or acceptance into a program leading to such commission or appointment in any branch of the Military Services.

d. Immediate enlistment or reenlistment.

e. Interservice transfer of inactive reserves in accordance with DOD Directive 1205.5 (reference (h)).

2. Characterization or Description. Honorable, unless:

a. An Entry Level Separation is required under section C1 of part 3;

b. Characterization of service as General (under honorable conditions) is warranted under section B of part 3 on the basis of the Enlisted Performance Evaluation System; or

c. Another characterization is warranted upon discharge from the IRR under part 8.

C. Convenience of the Government (COG)

1. Basis. A servicemember may be separated for convenience of the government for the reasons set forth in subsection C4.

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2. Characterization or Description. Honorable, unless:

a. An Entry Level Separation is required under section C1 of part 3; or

b. Characterization of service as General (under honorable conditions) is warranted under section B of part 3 on the basis of the Enlisted Performance Evaluation System.

3. Procedures. The Notification Procedure (section B of part 4) shall be used, subject to procedures established in subsection C4.

4. Reasons

a. Early release to further education. A servicemember may be separated to attend an institution of higher education (college or university), vocational school or technical school. The requested separation shall be within 3 months of the servicemember's expiration of active obligated service and within this limitation, not earlier than 10 days prior to the class convening date as prescribed by the educational institution. Servicemembers desiring to move their families to a location near the school and servicemembers returning from deployment or an overseas duty station may be separated up to 30 days prior to the class convening date but, in each case, within 3 months of the expiration of active obligated service.

(1) The applicant for separation to attend higher education (college or university) shall provide documentary evidence which substantiates:

(a) Acceptance for enrollment in a specific school term. (A summer term may be used to fulfill this requirement.)

(b) Enrollment in a full-time course of instruction leading to an associate, baccalaureate, or higher degree.

(c) The registration and convening dates of class for the specified school term.

(d) The listing or approval for listing of the educational institution in the Education Directory for Postsecondary Education published yearly by the National Center for Education Statistics, Department of Education.

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(2) The applicant for separation to attend a vocational or technical school shall provide documentary evidence which substantiate:

(a) Acceptance for enrollment commencing with a specific school term in a full-time course of instruction of not less than 3 months duration. Correspondence courses do not meet these requirements.

(b) The registration and class convening dates for the specified school term.

(c) The approval of the vocational or technical school by the cognizant State Board for Vocational Education or is accredited by a nationally recognized accrediting agency or association listed by the U.S. Commissioner of Education.

(3) The applicant must demonstrate the ability and willingness to make the required payment of an entrance fee, if any, if servicemember has not already done so.

(4) The applicant must clearly establish that the specific school term for which he or she seeks release is academically the most opportune time to begin or resume his or her education and that delay of enrollment until normal expiration of service would cause undue handicap.

(5) Servicemember's performance of duty must have been such that he or she is deserving of consideration for early separation. Performance must meet honorable discharge criteria.

(6) Servicemembers in the following categories are not eligible for early release under this provision:

(a) Servicemembers whose services are essential to the mission of the command.

(b) Servicemembers who are ordered to active duty due to unsatisfactory participation in a selected Reserve unit.

(c) Aliens seeking to qualify for citizenship by completion of 3 years of active duty military service unless they are to be transferred to inactive duty in a reserve component.

(d) Servicemembers who are ordered to active duty for training for a period of 4 to 10 months.

b. Dependency or hardship

(1) Upon request of the servicemember and concurrence of the separation authority, separation may be directed when genuine dependency or undue hardship exists under the following circumstances:

(a) The hardship or dependency is not temporary;

(b) Conditions have arisen or have been aggravated to an excessive degree since entry into the Service, and the servicemember has made every reasonable effort to remedy the situation;

(c) The administrative separation will eliminate or materially alleviate the condition; and

(d) There are no other means of alleviation reasonably available.

(2) Undue hardship does not necessarily exist solely because of altered present or expected income, family separation, or other inconveniences normally incident to naval service.

c. Pregnancy or childbirth. A female servicemember may be separated on the basis of pregnancy or childbirth upon her request, unless retention is determined to be in the best interest of the naval service under section A of part 2.

d. Parenthood. A servicemember may be separated by reason of parenthood if as a result thereof it is determined under the guidance set forth in section A of part 2 that the member is unable satisfactorily to perform his or her duties or is unavailable for worldwide assignment or deployment. Prior to involuntary separation under this provision, the Notification Procedure (section B of part 4) shall be used. Separation processing may not be initiated until the servicemember has been counseled formally concerning deficiencies and has been afforded an opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records.

e. Conscientious objection. A servicemember may be separated if authorized per DOD Directive 1300.6 (reference (i)).

f. Separation of aliens. A servicemember who is an alien, an individual who is neither a natural born nor a naturalized citizen of the United States, may be separated upon

request with the concurrence of the separation authority, on the basis of being an alien who no longer wishes to serve.

g. Surviving family member. A servicemember may be separated if authorized per DoD Directive 1315.15 (reference (j)).

h. Other designated physical or mental conditions

(1) A servicemember may be separated on the basis of other designated physical or mental conditions, not amounting to Disability (section D), that potentially interfere with assignment to or performance of duty under the guidance set forth in section A of part 2. Such conditions may include but are not limited to chronic air or seasickness, enuresis, and somnambulism.

(2) Separation processing may not be initiated until the servicemember has been counseled formally concerning deficiencies and has been afforded an opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records.

(3) Nothing in this provision precludes separation of a servicemember who has such a condition under any other basis set forth under this section (Convenience of the Government) or for any other reason authorized by this instruction.

i. Personality disorder

(1) Separation on the basis of personality disorder is authorized only if a psychiatrist or psychologist concludes that per article 15-23 of the Manual of the Medical Department (reference (k)), the servicemember has a personality disorder that is so severe that his or her ability to function effectively in the naval environment is significantly impaired. Personality disorders are described in the Diagnostic and Statistical Manual (DSM-IV) of Mental Disorders (reference (l)).

(2) Separation processing may not be initiated until the servicemember has been formally counseled concerning his or her deficiencies and afforded an opportunity to overcome the deficiencies documented in counseling or personnel records. Counseling is not required if the servicemember is determined by competent medical authority to be an immediate danger to himself or others.

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(3) Separation for personality disorder is not appropriate when separation is warranted under sections A through P of this part. For example, if separation is warranted on the basis of unsatisfactory performance (section G) or misconduct (section K), the member should not be separated under this section regardless of the existence of a personality disorder.

j. Review action. A servicemember may be separated if he or she is placed on appellate leave awaiting review of a punitive discharge, per DoD Directive 1327.5 (reference (m)), and whose punitive discharge is set aside, suspended, remitted or disapproved during the review process.

k. Reservist becomes a minister. A servicemember of the Reserve who becomes a regular or ordained minister of a religious faith group is entitled, upon his or her request, to discharge from the Naval or Marine Corps Reserve per 10 U.S.C. 1162 (reference (b)), if the servicemember satisfactorily establishes that:

(1) He or she will or does regularly engage in religious preaching and teaching;

(2) The ministry is or will be his or her main and primary calling - a vocation rather than avocation;

(3) His or her standing in the congregation is or will be recognized as that of a minister or leader of a group of lesser members; and

(4) His or her religious faith group is organized exclusively or substantially for religious purposes.

D. Disability.

1. Basis A servicemember may be separated for disability per SECNAVINST 1850.4C (reference (n)).

2. Characterization. Honorable, unless:

a. An Entry Level Separation is required under section C1 or part 3, or

b. Characterization of service as General (under honorable conditions) is warranted under Section B or part 3.



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3. Procedures. When characterization of service is General but is based on factors in the service record other than the Enlisted Performance Evaluation System, the servicemember shall be notified prior to characterization of the specific factors in the service record that warrant such a characterization, and the Notification Procedure shall be used. However, where the characterization is based on the Enlisted Performance Evaluation System, the Notification Procedure shall not be used.

E. Defective Enlistments and Inductions

1. Minority

a. Basis

(1) Under age 17. If a servicemember is under the age of 17, the enlistment is void, and the servicemember shall be separated.

(2) Age 17. A servicemember shall be separated under 10 U.S.C. 1170 (reference (b)), in the following circumstances except when he or she is retained for the purpose of trial by court-martial:

(a) There is satisfactory evidence, such as a copy of the member's birth certificate showing that the servicemember is under 18 years of age;

(b) The servicemember enlisted without the written consent of his or her parent or guardian; and

(c) An application for the servicemember's separation is submitted to the Secretary of the Navy by the parent or guardian within 90 days of his or her enlistment.

b. Description of Separation. A servicemember separated under subsection E1a(1) shall receive an order of release from custody and control of the naval service (by reason of void enlistment or induction). The separation of a servicemember under subsection E1a(2) shall be described as an Entry Level Separation.

c. Procedures. The Notification Procedure (section B of part 4) shall be used.

2. Erroneous

a. Basis. A servicemember may be separated on the basis of an erroneous enlistment, induction, or extension of enlistment under the guidance set forth in section A of part 2. An enlistment, induction, or extension of enlistment is erroneous in the following circumstances, if:

(1) It would not have occurred had the relevant facts been known by the Department of the Navy or had appropriate directives been followed;

(2) It was not the result of fraudulent conduct on the part of the individual; and

(3) The defect is unchanged in material respects.

b. Characterization or Description. Honorable, unless an Entry Level Separation or an order of release from the custody and control of the naval service (by reason of void enlistment or induction) is required under section C of part 3.

c. Procedures

(1) If the commanding officer recommends that the individual be retained in the naval service, the initiation of separation processing is not required in the following circumstances:

(a) The defect is no longer present; or

(b) The defect can be waived and a waiver is obtained from the general court-martial convening authority, or higher.

(2) If separation processing is initiated, the Notification Procedure (section B of part 4) shall be used.

3. Defective Enlistment Agreements

a. Basis. A defective enlistment agreement exists in the following circumstances:

(1) As a result of a material misrepresentation by recruiting personnel upon which the servicemember reasonably relied, the servicemember was induced to enlist with a commitment for which he or she was not qualified;

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(2) The servicemember received a written enlistment commitment from recruiting personnel for which he or she was qualified, but which cannot be fulfilled by the naval service; or

(3) The enlistment was involuntary, i.e., one that was induced by fraud or duress or undue influence and not the product of a free and unconstrained choice as exemplified by:

(a) Enlistment of an individual who lacks the capacity to understand the significance of enlisting in the armed services; or

(b) Enlistment of an individual whose enlistment is involuntary by reason of coercion resulting from being presented with the option of either enlisting or being subjected to a sentence of confinement by a court of competent jurisdiction.

b. Characterization or Description. Honorable, unless an Entry Level Separation or an order of release from the custody and control of the naval service (by reason of void enlistment) is required under section C of part 3.

c. Procedures

(1) This provision does not bar appropriate disciplinary action or other administrative separation proceedings regardless of when the defect is raised. Separation is appropriate under this provision only in the following circumstances:

(a) The servicemember did not knowingly participate in creation of the defective enlistment;

(b) The servicemember brings the defect to the attention of appropriate authorities within 30 days after the defect is discovered or reasonably should have been discovered by the servicemember; and

(c) The servicemember requests separation instead of other authorized corrective action.

(2) If separation processing is initiated, the Notification Procedure (section B of part 4) shall be used.

4. Fraudulent Entry Into the Naval Service

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a. Basis. A servicemember may be separated under guidance in section A of part 2 on the basis of procurement of a fraudulent enlistment, induction, or period of naval service through any deliberate material misrepresentation, omission, or concealment that, if known at the time of enlistment, induction, or entry into a period of naval service might have resulted in rejection.

b. Characterization or Description. Honorable, unless:

(1) An Entry Level Separation is required under section C1 of part 3;

(2) Characterization of service as General (under honorable conditions) is warranted under section B of part 3; or

(3) The Administrative Board Procedure was used, then characterization of service could result in Under Other Than Honorable Conditions.

c. Procedures

(1) The Notification Procedure (section B of part 4) shall be used except when the fraud involves concealment of a prior separation in which service was not characterized as Honorable, then the Administrative Board Procedure (section C of part 4) shall be used.

(2) When the sole reason for separation is fraudulent entry, suspension of separation (section B of part 2) is not authorized. When there are approved reasons for separation in addition to fraudulent entry, suspension of separation is authorized only in the following circumstances:

(a) A waiver of the fraudulent entry is approved;  
and

(b) The suspension pertains to reasons for separation other than the fraudulent entry.

(3) If the command recommends the servicemember be retained in the naval service, the initiation of separation processing is unnecessary in the following circumstances:

(a) The defect is no longer present; or

(b) The defect can be waived and a waiver is obtained from the general court-martial convening authority, or higher.

(4) If the material misrepresentation includes preservice or prior service homosexual conduct, the standards and procedures of section H, shall be applied in processing.

5. Separation from the Delayed Entry Program (DEP)

a. Basis

(1) An individual in the Delayed Entry Program (DEP) (inactive Reserve status) will be separated prior to coming on active duty when it is determined that he or she no longer meets the qualifications for enlistment as prescribed in DOD Directive 1304.26 (reference (o)), and when an individual's request for separation is approved by Commander, Navy Recruiting Command.

(2) Commanding officers of Navy Recruiting Districts are authorized to separate an individual of the DEP under this section with an entry level description of separation.

b. Description of Separation. Entry Level Separation.

c. Procedures. Personnel shall be notified in writing of the following:

(1) Basis of the disqualification. In the case of disqualification due to homosexual conduct, the basis for disqualification shall read:

Homosexual conduct as evidenced by:

(a) Member's statement that he or she is a homosexual or bisexual, or words to the effect, which creates a rebuttable presumption that he or she engages in, attempts to engage in, has the propensity to engage in, or intends to engage in homosexual acts;

(b) Member engaging in, attempting to engage in, or soliciting another to engage in a homosexual act or acts; and/or

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(c) Member's marriage or attempted marriage to a person known to be of the same biological sex.

(2) That the description of separation will be entry level.

(3) That the member has the right to submit evidence on his or her behalf that he/she does not engage in, attempt to engage in, or have a propensity to engage in homosexual acts.

d. The notice shall be delivered personally or sent by registered or certified mail, return receipt requested (or by an equivalent form of notice if such service is not available by the U.S. mail at an address outside the United States). If the person fails to acknowledge receipt of notice, the individual who mails the notification shall prepare a Sworn Affidavit of Service by Mail (see subsection F of part 8) that shall be inserted in the file along with Postal Service Forms 3800 and 3811.

F. Entry Level Performance and Conduct

1. Basis

a. A servicemember may be separated while in entry level status when it is determined under the guidance in section A of part 2 that the servicemember is unqualified for further naval service by reason of unsatisfactory performance or conduct (or both), as evidenced by inability, lack of reasonable effort, failure to adapt to the naval environment, or minor disciplinary infractions.

b. When separation of a servicemember in entry level status is warranted by unsatisfactory performance or minor disciplinary infractions (or both), the servicemember normally should be separated under this section. Nothing in this provision precludes separation under another provision of this instruction when such separation is authorized and warranted by the circumstances of the case.

2. Counseling and Rehabilitation. Separation processing may not be initiated until the servicemember has been counseled formally concerning those deficiencies and has been afforded an opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records.

3. Description of Separation. Entry Level Separation.

4. Procedures. The Notification Procedure (section B of part 4) shall be used.

G. Unsatisfactory Performance

1. Basis. A servicemember may be separated when it is determined per guidance in section A of part 2 that he or she is unqualified for further naval service by reason of unsatisfactory performance. This reason shall not be used if the servicemember is in entry level status (paragraph 9 of enclosure 1).

2. Counseling and Rehabilitation. Separation processing may not be initiated until the servicemember has been counseled formally concerning deficiencies and has been afforded an opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records. Counseling and rehabilitation requirements are of particular importance with respect to this reason for separation. Because naval service is a calling different from any civilian occupation, a servicemember should not be separated when unsatisfactory performance is the sole reason unless there have been efforts at rehabilitation.

3. Characterization or Description. Honorable, unless:

a. An Entry Level Separation is required under section C1 of part 3; or

b. Characterization of service as General (under honorable conditions) is warranted under section B of part 3.

4. Procedures. The Notification Procedure (section B of part 4) shall be used.

H. Homosexual Conduct

1. Basis

a. Homosexual conduct is grounds for separation from the naval service. Homosexual conduct includes homosexual acts, a statement by a servicemember that demonstrates a propensity or intent to engage in homosexual acts, or a homosexual marriage or attempted marriage. A statement by a servicemember that demonstrates a propensity or intent to engage in homosexual acts is grounds for separation not because it reflects the person's sexual orientation, but because the statement indicates a

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likelihood that the individual engages in or will engage in homosexual acts. A person's sexual orientation is considered a personal and private matter, and is not a bar to continued service unless manifested by homosexual conduct as defined in paragraph 13 of enclosure (1).

b. A servicemember shall be separated by reason of homosexual conduct if one or more of the following approved findings is made:

(1) The servicemember has engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts, unless there are approved further findings that:

(a) Such acts are a departure from the servicemember's usual and customary behavior;

(b) Such acts, under all of the circumstances, are unlikely to recur;

(c) Such acts were not accomplished by use of force, coercion, or intimidation;

(d) Under the particular circumstances of the case, the servicemember's continued presence in the naval service is consistent with the interest of the naval service in proper discipline, good order, and morale; and

(e) The servicemember does not have a propensity or intent to engage in homosexual acts.

(2) The servicemember has made a statement that he or she is a homosexual or bisexual, or words to that effect, unless there is a further approved finding that the individual has demonstrated that he or she is not a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts. A statement by a servicemember that he or she is a homosexual or bisexual, or words to that effect, creates a rebuttable presumption that the member engages in, attempts to engage in, has a propensity to engage in or intends to engage in homosexual acts. The servicemember shall be advised of this presumption and given the opportunity to rebut the presumption by presenting evidence demonstrating that he or she does not engage in, attempt to engage in, have a propensity to engage in, or intent to engage in homosexual acts. Propensity to engage in homosexual acts means more than an abstract preference or desire to engage in homosexual acts; it indicates a likelihood that a person engages in or will engage in homosexual



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acts. In determining whether a servicemember has successfully rebutted the presumption that he or she engages in, attempts to engage in, or has a propensity or intent to engage in homosexual acts, some or all of the following may be considered:

(a) Whether the servicemember has engaged in homosexual acts;

(b) The servicemember's credibility;

(c) Testimony from others about the servicemember's past conduct, character, and credibility;

(d) The nature and circumstances of the servicemember's statement; and

(e) Any other evidence relevant to whether the servicemember is likely to engage in homosexual acts.

(This list is not exhaustive. Any other relevant evidence may also be considered.)

(3) The servicemember has married or attempted to marry a person known to be of the same biological sex (as evidenced by the external anatomy of the persons involved).

2. Burden of Proof. See subsections H4e and H4f for guidance as to the burden of proof and when a finding regarding retention is required.

3. Characterization or Description. Characterization of service or description of separation shall be in accordance with guidance in part 3. When the sole basis for separation is homosexual conduct, a characterization Under Other Than Honorable Conditions may be issued only if such a characterization is warranted under part 3 and there is a finding that during the current term of service the servicemember attempted, solicited, or committed a homosexual act in the following circumstances:

a. By using force, coercion, or intimidation;

b. With a person under 16 years of age;

c. With a subordinate in circumstances that violate customary military superior-subordinate relationships;

d. Openly in public view;

- e. For compensation;
- f. Aboard a military vessel or aircraft; or
- g. In another location subject to military control under aggravating circumstances noted in the finding that have an adverse impact on discipline, good order, or morale comparable to the impact of such activity aboard a vessel or aircraft.

4. Procedures. The Administrative Board Procedure (section C of part 4) shall be used, subject to the following guidance:

a. Separation processing shall be initiated if there is probable cause to believe separation is warranted under subsection H1b. Fact-finding procedures for inquiries into homosexual conduct are in subsection H5.

b. The Administrative Board shall follow the procedures set forth in section C of part 4 except with respect to the following matters:

(1) If the Board finds that one or more of the circumstances authorizing separation under subsections H1b is supported by the evidence, the Board shall recommend separation unless the Administrative Board finds that retention is warranted under the limited circumstances described in subsections H1b(1)(a) through (e).

(2) If the Board does not find sufficient evidence that one or more of the circumstances authorizing separation under subsection H1b has occurred, the Board shall recommend retention, unless the case involves another basis for separation of which the servicemember has been duly notified.

c. In any case in which characterization of service under Other Than Honorable Conditions is not authorized, the separation authority may be exercised by an officer designated under part 6.

d. The separation authority shall dispose of the case according to the following provisions:

(1) If the Board recommends retention, the separation authority shall take one of the following actions:

(a) Approve the finding and direct retention; or

(b) Forward the case to the Secretary of the Navy with a recommendation that the Secretary separate the servicemember under the Secretary's Plenary Authority.

(2) If the Board recommends separation, the separation authority shall take one of the following actions:

(a) Approve the finding and direct separation; or

(b) Disapprove the finding on the basis of the following considerations:

1. There is insufficient evidence to support the finding; or

2. Retention is warranted under the limited circumstances described in subsections H1b(1)(a) through (e).

(3) If there has been a waiver of Board proceedings, the separation authority shall dispose of the case in accordance with the following provisions:

(a) If the separation authority determines that there is not sufficient evidence to support separation under subsection H1b, the separation authority shall direct retention unless there is another basis for separation of which the servicemember has been duly notified.

(b) If the separation authority determines that one or more of the circumstances authorizing separation under subsections H1b has occurred, the servicemember shall be separated unless retention is warranted under the limited circumstances described in subsections H1b(1)(a) through (e).

e. The servicemember shall bear the burden of proving throughout the proceeding, by a preponderance of the evidence, that retention is warranted under the limited circumstances described in subsections H1b(1)(a) through (e).

f. Findings regarding whether or not retention is warranted under the limited circumstances of subsections H1b(1)(a) through (e) are required if the servicemember clearly and specifically raises such limited circumstances.

g. Nothing in these procedures:

(1) Limits the authority of the Secretary of the Navy to take appropriate action in a case to ensure that there has been compliance with this instruction;

(2) Requires that a servicemember be processed for separation when a determination is made that:

(a) The servicemember engaged in acts, made statements, or married or attempted to marry a person known to be of the same biological sex for the purpose of avoiding or terminating military service; and

(b) Separation of the servicemember would not be in the best interest of the naval service.

(3) Precludes retention of a servicemember for a limited period of time in the interest of national security as authorized by the Secretary of the Navy;

(4) Authorizes a servicemember to seek Secretarial review unless authorized in procedures issued by the Secretary of the Navy;

(5) Precludes separation in appropriate circumstances for another reason in this instruction; or

(6) Precludes trial by court-martial in appropriate cases.

## 5. Fact-Finding

### a. Responsibility

(1) Only the servicemember's commander as defined in paragraph 4 of enclosure (1) is authorized to initiate fact-finding inquiries involving homosexual conduct. A commander may initiate a fact-finding inquiry only when he or she has received credible information that there is basis for discharge. Commanders are responsible for ensuring that inquiries are conducted properly and that no abuse of authority occurs.

(2) A fact-finding inquiry may be conducted by the commander personally or by a person he or she appoints. It may consist of an examination of the information reported or a more extensive investigation, as necessary.

(3) The inquiry should gather all credible information that directly relates to the grounds for possible separation. Inquiries shall be limited to the factual circumstances directly relevant to the specific allegations.

(4) If a commander has credible evidence of possible criminal conduct, he or she shall follow the procedures outlined in the Manual for Courts-Martial and implementing regulations issued by the Secretary of the Navy.

(5) The provisions of subsection H5 do not apply to the activities of the Naval Criminal Investigative Service and other DOD law enforcement organizations, which are governed by DOD Instruction 5505.8 (reference (q)).

b. Basis for conducting inquiries:

(1) A commander will initiate an inquiry only if he or she has credible information that there is a basis for discharge. Credible information exists when the information, considering its source and the surrounding circumstances, supports a reasonable belief that there is a basis for discharge. It requires a determination based on articulable facts, not just a belief or suspicion.

(2) A basis for discharge exists if:

(a) The servicemember has engaged in a homosexual act.

(b) The servicemember has said that he or she is a homosexual or bisexual, or made some other statement that indicates a propensity or intent to engage in homosexual acts; or

(c) The servicemember has married or attempted to marry a person of the same sex.

(3) Credible information does not exist, for example, when:

(a) The individual is suspected of engaging in homosexual conduct, but there is no credible information, as described, to support that suspicion; or

(b) The only information is the opinions of others that a servicemember is homosexual; or

(c) The inquiry would be based on rumor, suspicion, or capricious claims concerning a servicemember's sexual orientation;

(d) The only information known is an associational activity such as going to a homosexual bar, possessing or reading homosexual publications, associating with known homosexuals, or marching in a homosexual rights rally in civilian clothes. Such activity, in and of itself, does not provide evidence of homosexual conduct.

(4) Credible information exists, for example, when:

(a) A reliable person states that he or she observed or heard a servicemember engaging in homosexual acts, or saying that he or she is homosexual or bisexual or is married to a member of the same sex; or

(b) A reliable person states he or she heard, observed, or discovered a servicemember make a spoken or written statement which a reasonable person would believe was intended to convey the fact that he or she engages in, attempts to engage in, or has a propensity or intent to engage in homosexual acts; or

(c) A reliable person states he or she observed behavior that amounts to a non-verbal statement by a servicemember that he or she is a homosexual or bisexual; i.e., behavior that a reasonable person would believe was intended to convey the statement that the servicemember engages in, attempts to engage in, or has a propensity or intent to engage in homosexual acts.

#### c. Procedures

(1) Informal fact-finding inquiries and administrative separation procedures are the preferred method of addressing homosexual conduct. This does not prevent disciplinary action or trial by court-martial when appropriate.

(2) Commanders shall exercise sound discretion regarding when credible information exists. They shall examine the information and decide whether an inquiry is warranted or whether no action should be taken.

(3) Commanders or appointed inquiry officials shall not ask, and the servicemember shall not be asked to reveal, whether he or she is a heterosexual, homosexual, or bisexual. However, upon receipt of credible information of homosexual

conduct (as defined in paragraph 13 of enclosure (1)), commanders or appointed inquiry officials may ask servicemembers if they engaged in such conduct. But the servicemember should first be advised of the DOD policy (reference (a)) on homosexual conduct and his or her rights under UCMJ, article 31, if applicable. Should the individual choose not to discuss the matter further, the commander should consider other available information. Nothing in this provision precludes questioning a person about any information provided by them in the course of the fact-finding inquiry or any related proceedings.

(4) At any given point of the inquiry, the commander or appointed inquiry official must be able to clearly and specifically explain which grounds for separation he or she is attempting to verify and how the information being collected relates to those specific separation grounds.

(5) A statement by a servicemember that he or she is homosexual or bisexual, or words to that effect, creates a rebuttable presumption that the servicemember engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts. The servicemember shall be given the opportunity to present evidence demonstrating that he or she does not engage in, or attempt to engage in, or have a propensity or intent to engage in homosexual acts.

(6) The servicemember bears the burden of proving, by a preponderance of evidence, that he or she is not a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts.

(7) The above procedures create no substantive or procedural rights.

## I. Drug Abuse Rehabilitation Failure

### 1. Basis

a. A servicemember who has been referred to a program of rehabilitation for personal drug abuse may be separated for failure through inability or refusal to participate in, cooperate in, or successfully complete such a program in the following circumstances:

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(1) There is a lack of potential for continued naval service; or

(2) Long term rehabilitation is determined necessary and the servicemember is transferred to a civilian medical facility for rehabilitation.

b. Nothing in this provision precludes separation of a servicemember who has been referred to such a program under any other provision of this instruction in appropriate cases.

2. Characterization or Description. Honorable, unless:

a. An Entry Level Separation is required under section C1 of part 3; or

b. Characterization of service as General (under honorable conditions) is warranted under section B of part 3.

3. Procedures. The Notification Procedure (section B of part 4) shall be used.

J. Alcohol Abuse Rehabilitation Failure

1. Basis

a. A servicemember who has been referred to a program of rehabilitation for personal alcohol abuse may be separated for failure through inability or refusal to participate in, cooperate in, or successfully complete such a program in the following circumstances:

(1) There is a lack of potential for continued naval service; or

(2) Long term rehabilitation is determined necessary and the servicemember is transferred to a civilian medical facility for rehabilitation.

b. Nothing in this provision precludes separation of a servicemember who has been referred to such a program under any other provision of this instruction in appropriate cases.

2. Characterization or Description. Honorable, unless:

a. An Entry Level Separation is required under section C1 of part 3; or



b. Characterization of service as General (under honorable conditions) is warranted under section B of part 3.

3. Procedures. The Notification Procedure (section B of part 4) shall be used.

K. Misconduct

1. Basis

a. Reasons. A servicemember may be separated for misconduct when it is determined under the guidance set forth in section A of part 2 that the servicemember is unqualified for further naval service by reason of one or more of the following:

(1) Minor disciplinary infractions. A pattern of misconduct consisting solely of minor disciplinary infractions. If separation of a servicemember in entry level status is warranted solely by reason of minor disciplinary infractions, the action should be processed under Entry Level Performance and Conduct (section F of this part).

(2) A pattern of misconduct. A pattern of more serious misconduct consisting of two or more discreditable involvements with civil or naval authorities, or two or more instances of conduct prejudicial to good order and discipline within the current enlistment. Such a pattern may include both minor and more serious infractions, including the following:

1. An established pattern of involvement of a discreditable nature with civil or naval authorities;

2. an established pattern of minor unauthorized absences;

3. an established pattern of dishonorable failure to pay just debts; or

4. an established pattern of dishonorable failure to contribute adequate support to dependents or failure to comply with orders, decrees, or judgments of a civil court concerning support of dependents.

(3) Commission of a serious offense. Commission of a serious military or civilian offense if in the following circumstances:

(a) The specific circumstances of the offense warrant separation; and

(b) A punitive discharge would be authorized for the same or a closely related offense under the Manual for Courts-Martial (reference (r)).

(4) Civilian conviction

(a) Conviction by civilian authorities or action taken that is tantamount to a finding of guilty, including similar adjudications in juvenile proceedings, when the specific circumstances of the offense warrant separation, and the following conditions are present:

1. A punitive discharge would be authorized for the same or a closely related offense under the Manual for Courts-Martial (reference (r)); or

2. The sentence by civilian authorities includes confinement for 6 months or more without regard to suspension or probation.

(b) Separation processing may be initiated whether or not a servicemember has filed an appeal of a civilian conviction or has stated an intention to do so. Execution of an approved separation should be withheld pending outcome of the appeal or until the time for appeal has passed, but the member may be separated before final action on the appeal upon request of the member or upon direction of the Secretary of the Navy.

(5) Drug abuse. A servicemember may be separated for drug offenses per the drug abuse policy contained in SECNAVINST 5300.28B (reference (s)). The offenses may be one or more military offenses or convictions by civil authorities (including actions tantamount to findings of guilt).

b. Related separations. Homosexual conduct shall be processed under section H. Misconduct involving a fraudulent enlistment is considered under subsection E4, and misconduct involving drug abuse shall be considered only under subsection K1a(5).

2. Counseling and Rehabilitation. Separation processing for a pattern of misconduct or minor disciplinary infractions (subsections K1a(1) and (2) of this part) may not be initiated until the servicemember has been counseled formally concerning deficiencies and has been afforded an opportunity to overcome

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those deficiencies as reflected in appropriate counseling or personnel records. If the sole basis of separation is a single offense (subsections K1a(3) and (5)) or a civilian conviction or a similar juvenile adjudication (subsections K1a(4) and (5)), the counseling and rehabilitation requirements are not applicable.

### 3. Characterization or Description

a. Administrative Board Procedure used. Other Than Honorable, unless characterization of service as General is warranted under section B of part 3.

b. Notification Procedure used. General.

c. For servicemembers who have completed entry level status, characterization of service as Honorable is not authorized unless the respondent's record is otherwise so meritorious that any other characterization would clearly be inappropriate. In such cases, separations for misconduct with an Honorable characterization of service must be approved by a commander exercising general court-martial convening authority, or higher authority. As exceptions to this requirement, special court-martial convening authorities may approve separations with service characterized as Honorable when (1) the sole evidence of misconduct is command-directed urinalysis results which cannot be used for characterization of service or (2) an administrative discharge board has recommended an Honorable discharge.

d. When characterization of service under Other Than Honorable is not warranted for a servicemember in entry level status, the separation shall be described as Entry Level Separation per section C1 of part 3.

4. Procedures. The Administrative Board Procedure (section C of part 4) shall be used; however, use of the Notification Procedure (section B of part 4) is authorized if characterization of service Under Other Than Honorable Conditions is not warranted under section B of part 3.

### L. Separation in Lieu of Trial by Court-Martial

1. Basis. A servicemember may be separated upon request in lieu of trial by court-martial if charges have been preferred with respect to an offense for which a punitive discharge is authorized and it is determined that the servicemember is unqualified for further naval service under the guidance set forth in section A of part 2. This provision may not be used

when Rule for Courts-Martial (R.C.M.) 1003(d) of the Manual for Courts-Martial (reference (r)) provides the sole basis for a punitive discharge unless the charges have been referred to a court-martial empowered to adjudge a punitive discharge.

## 2. Characterization or Description

a. Other Than Honorable, unless characterization of service as General is warranted under the guidelines in section B of part 3.

b. For respondents who have completed entry level status, characterization of service as Honorable is not authorized unless the respondent's record is otherwise so meritorious that any other characterization clearly would be inappropriate.

c. When characterization of service Under Other Than Honorable Conditions is not warranted for a servicemember in entry level status under section C1 of part 3, the separation shall be described as an Entry Level Separation.

## 3. Procedures

a. The request for discharge must be submitted in writing and signed by the servicemember.

b. The servicemember shall be afforded opportunity to consult with counsel qualified under article 27(b)(1) of the UCMJ (reference (d)). If he or she refuses to do so, counsel shall prepare a statement to this effect which shall be attached to the file, and the servicemember shall state that he or she has waived the right to consult with counsel.

c. Except when the servicemember has waived the right to counsel, the request shall be signed by counsel.

d. In the written request, the servicemember shall state that he or she understands the following:

(1) The elements of the offense or offenses charged;

(2) That characterization of service Under Other Than Honorable Conditions is authorized; and

(3) The adverse nature of such a characterization and possible consequences thereof.

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e. One or both of the following matters shall also be included in the request:

(1) An acknowledgment of guilt of one or more of the offenses or any lesser included offenses for which a punitive discharge is authorized; or

(2) A summary of the evidence or list of documents (or copies thereof) provided to the servicemember pertaining to the offenses for which a punitive discharge is authorized.

f. The separation authority shall be a commander exercising general court-martial jurisdiction or higher authority. As an exception, the special courts-martial convening authorities may approve requests for discharge in the case of enlisted members who have been absent without leave for more than 30 days, have been dropped from the rolls of their units as absent in desertion, have been returned to military control, are assigned to a regional personnel control/separation processing facility, and are charged only with being absent without leave for more than 30 days.

g. Statements by the servicemember or his or her counsel submitted in connection with a request under this subsection are not admissible against the servicemember in a court-martial except as authorized under Military Rule of Evidence 410, Manual for Courts-Martial (reference (r)).

#### M. Security

1. Basis. When retention is clearly inconsistent with the interest of national security, a servicemember may be separated by reason of security per DOD 5200.2-R (reference (t)).

#### 2. Characterization or Description

a. Administrative Board Procedure used. Other Than Honorable, unless characterization of service as General is warranted under section B of part 3.

b. Notification Procedure used. General.

c. For servicemembers who have completed entry level status, characterization of service as Honorable is not authorized unless the respondent's record is otherwise so meritorious that any other characterization would be clearly inappropriate.

d. When characterization of service under Other Than Honorable is not warranted for a servicemember in entry level status, the separation shall be described as Entry Level Separation per section C1 of part 3.

3. Procedures. The Administrative Board Procedure (section C of part 4) shall be used; however, use of the Notification Procedure (section B of part 4) is authorized if characterization of service Under Other Than Honorable Conditions is not warranted under section B of part 3.

N. Unsatisfactory Participation in the Ready Reserve

1. Basis. A servicemember may be separated for unsatisfactory participation in the Ready Reserve under criteria established in DoD Directive 1215.13 (reference (p)).

2. Characterization or Description. Characterization of service or description of a separation shall be in accordance with section B of part 3.

3. Procedures. The Administrative Board Procedure (section C of part 4) shall be used, except that the Notification Procedure (section B of part 4) may be used if characterization of service Under Other Than Honorable Conditions is not warranted under section B of part 3.

O. Weight Control Failure

1. Basis. A servicemember may be separated for failure to meet the weight control standards established under DOD Directive 1308.1 (reference (u)), when it is determined that he or she is unqualified for further naval service and meets both of the following conditions:

a. The servicemember is not medically diagnosed with a medical condition that precludes or interferes with weight control. Servicemembers with a medically diagnosed condition that precludes or interferes with weight control may be separated either through medical channels, if appropriate, or under the guidance in subsection C4h.

b. The servicemember fails to meet weight control standards, and the sole reason for separation is failure to meet the weight control standard.

2. Counseling and Rehabilitation. Separation processing may not be initiated until the servicemember has been counseled formally concerning deficiencies and has been afforded an opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records.

3. Characterization or Description. Honorable, unless:

a. An Entry Level Separation is required under section C1 of part 3; or

b. Characterization of service as General (under honorable conditions) is warranted under section B of part 3 on the basis of the Enlisted Performance Evaluation System.

4. Procedures. The Notification Procedure (section B of part 4) shall be used.

P. Secretarial Plenary Authority

1. Basis. Notwithstanding any limitation on separations provided in this instruction, the Secretary of the Navy may direct the separation of any servicemember prior to expiration of term of service after determining it to be in the best interests of the service.

2. Characterization or Description. Honorable, unless:

a. An Entry Level Separation is required under section C1 of part 3; or

b. Characterization of service as General (under honorable conditions) is warranted under section B of part 3.

3. Procedures. Prior to involuntary separation, the Notification Procedure (section B. of part 4) shall be used, except that portion of the procedure allowing the servicemember to request an Administrative Board (subsection B1g of part 4) which is not applicable when processing under this article.

Q. Reasons Established by the Department of the Navy. Should the need arise to separate servicemembers for a reason not established in this instruction, the Chief of Naval Operations or the Commandant of the Marine Corps may propose to the Assistant Secretary of the Navy (M&RA), the establishment of a new reason for separation to be included in this instruction. The recommendation shall contain:

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1. The basis for the requested separation.
2. Recommended processing procedure.
3. Recommended characterization of service or description for the proposed separation.
4. Whether counseling and rehabilitation requirements should be required prior to initiating separation processing.

The recommendation must be consistent with the guidance set forth in parts 1 through 9. If the proposal is such that approval by Assistant Secretary of Defense (ASD (P&R)) is required per DOD Directive 1332.14 (reference (a)), it will be prepared for submission to that office by the Assistant Secretary of the Navy (M&RA). Separation under any proposed reason will not be executed until the proposal has been approved.